Supreme Court, U.S.
FILED

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Case No.

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH B. ZAMVIL,

Petitioner,

v.

PETALUMA JOINT UNION HIGH SCHOOL DISTRICT, CHARLES CADMAN, SUPERINTENDENT, and DOES 1 through 50,

Respondents.

Petition for a Writ of Certiorari to
California Court of Appeal
First Appellate District,
Division Four

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. *The California Court of Appeal held that petitioner waived his right to be heard because he failed to object to governmental violations of his rights before signing a resignation and release. Petitioner was not allowed to prove that the government successfully concealed its violations from him. May a state court declare a waiver of the right to be heard because of an individual's failure to discover what the state has successfully concealed? Must a waiver of the right to be heard be knowing and informed?*

2. *California courts declared a waiver of petitioner's right to be heard while denying petitioner the opportunity to introduce evidence to disprove waiver. Must a state court allow an individual a meaningful opportunity to introduce evidence to prove the right to be heard?*

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Kenneth Zamvil, respectfully prays that a Writ of Certiorari issue to review the Judgment of the Court of Appeal of the State of California in and for the First Appellate District (A081951) entered in this matter on January 18, 2000.[1]

OPINION BELOW

The January 18, 2000 decision of the Court of Appeal of the State of California, First Appellate District, and the order of the Supreme Court of California on April 19, 2000 denying a Petition for Review, are reproduced in the appendix.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §§ 1257 and 2101, this being a petition arising out of a right claimed under the Constitution of the United States. The petition is filed within 90 days of April 19, 2000.

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[1] All parties are named in the caption of the case.

CONSTITUTIONAL PROVISION AT ISSUE

Amendment XIV:
". . . . nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

STATEMENT OF THE CASE

A California school district secretly stripped Kenneth Zamvil of his rights and a California Court of Appeal held them forfeited when Zamvil failed to assert the constitutional and criminal violations which had been successfully concealed by the District. The facts we state are undisputed in the record unless otherwise indicated:

A. ZAMVIL'S SUSPENSION AND RESIGNATION

On March 2, 1992, petitioner, a tenured public school teacher was summarily suspended without pay by the Petaluma Joint Union School District (hereinafter "the District"). After completion of administrative discovery, the charges themselves were set for hearing on November 8, 1993. On October 25, 1993, however,

Zamvil's attorney withdrew (RT 207),[2] leaving Zamvil without representation at the mammoth upcoming hearing, where the two sides had plans for a hundred witnesses.[3] (RT 259, 489) Unable to obtain representation for the hearing on such short notice, and fearful of his chances without representation, Zamvil formally resigned on November 6, 1993. (RT 221, 278-279, 340-342, 344,429-430)

B. THE RESCISSION ACTION

Only after his resignation, Zamvil learned that the District had taken grossly unfair advantage of his predicament. On June 28, 1994, he filed suit to rescind the resignation contract, and for a declaration that the contract was void and unenforceable on account of duress, undue influence, fraud, and violations of due process of law. (JA 1-13) At Zamvil's May, 1996 trial, however, Zamvil was not allowed to prove the newly discovered evidence of the District's misconduct, or anything else that had occurred prior to the November, 1993 negotiations for his resignation.

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[2] The following abbreviations will be used to designate the record on appeal:

(RT): Reporter's Transcript (2 volumes, pages 1 through 563)

(JA): Joint Appendix (4 volumes, page 1 through 1077)

[3] The District planned to call 30 witnesses. Zamvil's prior counsel had plans to call 70-80 witnesses.

At the outset of trial and in the course of trial briefs, petitioner made an offer of proof with respect to the District's unlawful course of conduct (RT 4-49; JA 269-275, 380-397), and petitioner's offer of proof was repeated and restated on numerous occasions during the course of trial. (See below.) Further details of petitioner's offer of proof were made in his motion for new trial. (JA 601-602; 605-623) Each and every one of petitioner's offers were rejected. (RT 4-49, 61-62, 334-338, 389, 490, 516, 518; JA 543-544, 568-571, 778; see below.) A topical summary follows as to petitioner's offer and the evidence which the Court refused to hear.

C. THE HISTORY OF GOVERNMENTAL MISCONDUCT WHICH THE TRIAL COURT REFUSED TO HEAR

1. The August 14, 1990 Meeting

Without notice to Zamvil, and therefore in violation of the California Open Meeting Law, the Petaluma Joint Union High School District held an open public meeting about Kenneth Zamvil on August 14, 1990. (JA 382, 384-386) Complaints against Zamvil were specifically solicited. (RT 24, 335; JA 274) Students and parents were encouraged to foment complaints. (RT 4; JA 274) Students not in his classes and parents unknown to Zamvil were allowed to voice complaints. (JA 335, 384, 607) Though the meeting was tape recorded, and though a transcript of the meeting was prepared, and

provided to the District's investigator, Jack Fitzgerald, who later disclosed its contents to members of the public, petitioner has never been provided with a copy of the tape recording or of the transcript. (JA 382, 385, 614-621) Apparently, however, during the course of this meeting, and again without notice to him, petitioner was charged with immoral conduct. (JA 610)

2. The Unlawful Investigation

After the meeting, the Board conducted an unlawful, secret investigation to drum up and solicit complaints to steam-roll petitioner with false charges. (RT 4, 24, 27, 43, 376-377; JA 335, 385-388, 392, 621-622)

3. All Charges Resolved

On November 1, 1991, the Board again secretly met to discuss petitioner. Charges were again presented to the School Board without Mr. Zamvil's notification, presence, or knowledge. (RT 40, 61) Eleven days later, Zamvil was presented with a warning letter. (RT 43,45, 59; JA 388) Zamvil, however, addressed all the issues in this letter and modified his behavior to the satisfaction of his evaluator, James McGloin, the Principal of Casa Grande High School, and the Primary Evaluator of Mr. Zamvil. (RT 43, 45, 59, 61; JA 388) At this point in time, under the explicit terms of the Collective Bargaining Agreement between the District and its teachers, and

under the provisions of the Education Code, all issues between the District and Mr. Zamvil should have, *as a matter of California law*, been deemed successfully resolved. (JA 388)

4. The Unlawful 1992 Actions

On February 25, 1992, however, the District, meeting in closed session, again without notice to Zamvil, ignored both the Collective Bargaining Agreement and Zamvil's successful performance under its terms, and instead took action based upon the results of its secret investigation of complaints solicited by the Board back in August of 1990, despite the fact that the subject matter of these complaints were, as a matter of law, dead issues. (RT 40, 43; JA 388) Thus, on February 25, 1992, the Board, meeting in closed session, without notice to Zamvil, voted to suspend Zamvil without pay and initiate a process of dismissal. (RT 43) On March 2, 1992, Zamvil was therefore summarily suspended without pay with no notice or opportunity to defend himself and with no notice from his superiors or site evaluators of any misdeeds, shortcomings, or deficiencies in his conduct or teaching performance that had not been corrected. (JA 607-608)

5. The Multiple Violations of Law

The District's course of conduct over this seventeen-month period from August, 1990 through

March of 1992, violated the California Open Meeting Law (Government Code §§ 54950, 54957). (RT 24, 25, 43, 377; JA 607) The District's course of conduct also violated California Education Code § 44938, guaranteeing an employee the opportunity to remediate and overcome the grounds for charges. (RT 4, 27; JA 380, 381, 392, 609) The District also violated Petaluma School District Bylaw 9322, requiring notice to an employee of his right to elect an open or closed hearing of complaints. (RT 4, 25, 27, 38, 43; JA 385, 386, 392, 606, 609) The District also violated School Board Policy 1312(a), which prevents complaints from being heard by the Board until the teacher has been provided the opportunity to explain his behavior and resolve the problem through the Principal. (RT 4, 25-26, 27, 38, 43; JA 386, 392, 606, 609) The District also violated the District's Collective Bargaining Agreement which requires that complaints be first addressed to the teacher, and prohibits Board action until a number of progressive resolution procedures have first been exhausted. (RT 4, 27, 38, 43; JA 386-387, 606, 609-610)

6. Charges Designed to Deprive Zamvil of His Civil Rights

The charges against Kenneth Zamvil were artfully contrived to deprive Zamvil of his civil rights. Thus, at the time of his March 2, 1992 dismissal, Zamvil was presented with a list of 41 false charges that had been

approved by the Board in closed session, without notice to him. (RT 4-5, JA 608) Along with the list of false charges, he was presented with fourteen (14) transcribed statements from underachieving students and a number of parents whose statements had been tape recorded by the District's investigator, Jack Fitzgerald. (JA 608) Thereafter, approximately eleven (11) additional Fitzgerald transcripts were forwarded to Zamvil and an additional twenty (20) false charges were levied against him. (RT 4-5; JA 608)

At all times, the District and its attorneys have maintained that these charges against Zamvil were scrupulously based on the transcripts of the Fitzgerald investigation. (RT 515; JA 451, 608-609) While the transcripts do not support the allegations and in many cases actually refute the charges, many of the charges are composed in intentionally mis-descriptive, inflammatory language.[4] (RT 517-518; JA 609, 615-621) The immoral conduct charges all appear to arise out of the secret August 14, 1990 Board of Education hearing for which the District still refuses to provide Zamvil a transcript. (JA 610, 615-621)

Zamvil requested that his Collective Bargaining Unit defend him. Like Zamvil, however, the Collective

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[4] In the most obvious abuse of discretion, the trial court found that the 61 charges are based on the Fitzgerald transcripts. (JA 539) The trial court, however, refused to take evidence on this issue. (RT 517-518)

Bargaining Unit was unaware of the Board's illegal activities. The Board's secret events were not noticed to the Collective Bargaining Unit. (RT 38) Consequently, the Unit informed Mr. Zamvil that inasmuch as the District charges included allegations of immoral conduct, the procedural protections of the Collective Bargaining Agreement, Board Policy 1312(a), and Bylaw number 9322 did not afford him protection. (JA 609) The District specifically included the charges to deprive Zamvil of his civil rights under California Education Code § 44938, the Collective Bargaining Agreement, Board Bylaw 9322 and Board Policy 1312(a). (RT 4, 45, 387-389, JA 609-610) Had immoral conduct charges not been included, Zamvil would have been entitled to written notice of the complaints and "opportunity to correct his or her faults and overcome the grounds for such charge." California Education Code § 44938. Zamvil also could not have been immediately suspended, and certainly not without pay. (JA 610)

7. Fraud and Perjury by the District During Administrative Discovery

Petitioner's March 1992 dismissal and the entire administrative proceedings were thus secretly based upon complaints unlawfully solicited by the District during the illegal August 1990, November 1991, and February 1992 meetings and the unlawful investigations which arose out of those unlawful meetings. (RT 24,40,43; JA

335, 388, 610, 615-621) As a proximate result of the conspiracy to deprive him of his civil rights, petitioner, however, was not privy to these concealed facts at the time he signed the November 6, 1993 resignation and release. (RT 9, 15, 21, 22, 23, 26, 38, 47, 335, 376-377; JA 391-392, 615-621) Throughout the administrative process, and during the course of administrative discovery, the District actively concealed its wrongdoing, its California Open Meeting Law violations, as well as its violations of District Bylaws and District Policies. (RT 9-15, 240; JA 274, 337, 391-392, 394, 621) Indeed, Zamvil was falsely advised by the District that the open Board meetings in question were closed sessions and that he was not entitled to information regarding the proceedings. (RT 9, 21-22, 34; JA 274, 392, 612) This lie was used to deny Zamvil a copy of the transcript of the tape recorded August 14, 1990 meeting. (JA 615) Public records of the meeting were also falsified by the District. (RT 25; JA 392, 621) District Superintendent Cadman also committed perjury during administrative discovery (JA 392, 621), falsely testifying that the August 1990 Board hearing was closed and not agendaed in order to prevent petitioner from obtaining a tape recording of the proceedings. (RT 34; JA 274, 391-392, 615) These concealments by the District of its wrongdoing effectively made it impossible for Zamvil to discover the District's wrongdoing prior to signing the resignation and release. (JA 391-392) Indeed, it was not until Superintendent Cadman's deposition in the

instant action, shortly before trial, that it was revealed that the August 14, 1990 hearing was an open public meeting. (RT 34-38)

D. THE TRIAL COURT DECISION

Having excluded more than ninety percent of Zamvil's case, *in limine,* the trial court duly found that the elements of rescission were not proved and denied petitioner's entire complaint. (JA 541-543, 574)

E. OPINION BELOW

Petitioner took an appeal to the California Court of Appeal. His Opening Brief identified seventeen violations of his rights by the District, all of which were unknown to him at the time he entered into the resignation agreement:

(1) The District intentionally drummed up false complaints for the purpose of steam rolling Zamvil in violation of state law and local Bylaws and Policies;

(2) Encouraged students to foment false complaints against him;

(3) Held unlawful secret meetings, without notice to him for the purpose of depriving him of his civil rights;

(4) Breached the Collective Bargaining Agreement;

(5) Violated California Education Code § 44938;

(6) Violated Board Policy 1312(a);

(7) Violated Board Bylaw 9322;

(8) Violated the California Open Meeting Law;

(9) Falsely charged him with immoral conduct in order to deprive him of his civil rights;

(10) Suspended him without pay in violation of law;

(11) Falsified public records to deprive him of his civil rights;

(12) Committed perjury to deprive him of his civil rights;

(13) Concealed public records to deprive him of his civil rights;

(14) Unlawfully failed to produce relevant documents during the course of administrative discovery;

(15) Concealed the factual basis for the charges brought against him;

(16) Concealed illegal conduct to deprive him of his civil rights;

(17) Based the charges brought against him on information obtained during the course of an illegal Board meeting.

The Court of Appeal acknowledged Zamvil's offer to prove this egregious misconduct by the District, but discounted it as "too remote in time to affect Zamvil's

consent to the resignation agreement." (Opinion at A-5)[5] By the Court of Appeal's view, Zamvil waived objection to the secret violations of his rights since he "had plenty of time to investigate and take action within the administrative proceedings with respect to all the purported violations. Copies of interview transcripts from the interviews with parents and students that Fitzgerald elected to tape-record were given to Zamvil. His remedy was to challenge the District's procedures, actions and processes in the administrative proceeding." (Opinion at A-6)

REASONS FOR GRANTING THE WRIT

I

THIS COURT SHOULD DECIDE THAT A WAIVER OF THE RIGHT TO BE HEARD MUST BE KNOWING AND INFORMED

What petitioner offers to prove to any court that will hear his case reads like the Story of Job. Wrong upon wrong was heaped upon him by the District. Sixty-one false charges. Suspension of pay. Perjury. Falsification of records. Massive denials of due process. And all times Zamvil was kept in the dark. Yet California courts will not even hear the evidence.

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[5] Page references are made to the pagination provided of the Opinion of the Court of Appeal as it appears in the Appendix.

Fraudulent and criminal misconduct by the government as an employer violates the Bill of Rights and the Fourteenth Amendment. The employment relationship, the administrative hearing process, and settlement agreement itself, must of necessity satisfy the requirements of due process of law. *Gilbert v. Homar* 520 U.S. 924 (1997); *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985); *Board of Regents of State College v. Roth* 408 U.S. 564, 578 (1972); *Perry v. Sindersmann* 408 U.S. 593, 602-603 (1972).

The California Court of Appeal found that Zamvil waived his right to be heard concerning the District's violations of his rights because he "had plenty of time to investigate and take action within the administrative proceeding with respect to all the purported violations. Copies of the interview transcripts from the interviews with parents and students that Fitzgerald elected to tape-record were given to Zamvil." (Opinion of the Court of Appeal at A-6)

Zamvil, however, consistently offered to prove that he didn't know his rights had been violated at the time he signed the agreement. (RT 9, 15, 21-23, 26, 38, 47, 334-338, 376-377, 386-389; JA 391-392, 614-621) At trial, he alleged criminal misconduct by the District and its Superintendent, during the 18-month period, to prevent him from discovering that he had been stripped of his rights. (RT 38, 240, 386-389; JA 274, 391-392, 621) Thus, of the seventeen instances of governmental misconduct (Opinion of the Court of Appeal at A-5)

alleged by Zamvil, six refer to concealed misconduct operating up to the date of the agreement:

1. Falsification of public records to deprive him of his civil rights;
2. Perjury to deprive him of his civil rights;
3. Concealing public records to deprive him of his civil rights;
4. Unlawful failure to produce relevant documents during the course of administrative discovery;
5. Concealing the factual basis for the charges brought against him;
6. Concealing illegal conduct to deprive him of his civil rights.

As for the transcripts of the interviews with parents and students given to Zamvil, it has never been suggested that these transcripts provided notice of the District's misconduct. Zamvil, indeed, offered to, but was not allowed to prove, that the charges against him were not based on the transcripts (RT 517-518; JA 609, 615-621) and that the core of the immoral conduct charges against him arose out of the secret August 14, 1990 Board of Education hearing for which the District still refuses to provide Zamvil a transcript. (JA 382, 385, 610, 614-621) Viewing this case in terms of what petitioner offered to but was not allowed to prove, the decision of the California Court of Appeals stands for the proposition that government can secretly strip an

individual of his rights and hold them waived when the individual fails to assert that which is unknown to him.

Clearly, this is not and cannot be the law of the United States. The right to be heard is "one of the most fundamental aspects of due process." *Shroeder v. New York City* 371 U.S. 208, 212 (1962) ; *Accord, Armstrong v. Manzo* 380 U.S. 545,551 (1965). This core requirement of due process is premised upon non-concealment by one's adversary. "The right to be heard has little reality or worth unless one is informed . . . ." *Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950).

The concept of waiving government fraud is new to this Court. Cf. *Whitmore v. Arkansas* 495 U.S. 149,173 (1990) (dissenting opinion) (one cannot consent to patently unconstitutional conduct). Even private individuals, who are not bound by constitutional duties, have not been allowed to deal in this fashion when far less than the right to be heard concerning fundamental rights is at stake. For more than 100 years, this Court has espoused the rule that waiver may not be claimed by one who has a duty to disclose the true facts, but has failed to do so. *Insurance Company v. Wolff* 95 U.S. 326, 333 (1877); *Northern Assurance Company v. Grandview Building Association,* 183 U.S. 308, 357 (1902). "To permit such concealment . . . would tend to sanction a fraud." *Insurance Company v. Wolff, supra,* 95 U.S. 326 at 333.

No lesser standard may apply to government violations of constitutional rights. As this Court held in *Thorpe v. The City of Durham* 368 U.S. 670 (1967), in connection with a tenancy relationship between an individual and a city housing authority,

> "[I]t is not dispositive to maintain that a private landlord might terminate a lease at his pleasure. For this is government we are dealing with, and the action of the government are circumscribed by the Bill of Rights and the Fourteenth Amendment." *Id.* at 678

As for waiver, the waiver standards set forth in the decisions of this Court deserve further clarification. In *Brady v. United States,* 397 U.S. 742, 748 (1970), involving the entry of a guilty plea, this Court espoused an expansive view:

> "Waivers of constitutional rights not only must be voluntary but must be knowing intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

While a number of subsequent decisions of the Court apply this standard — or a variation of it — none specifically adopt *Brady's* expansive all-constitutional-right viewpoint. See, e.g., *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (right to remain silent and right to presence of an attorney during questioning); *Whitmore v. Arizona,* 495 U.S. 149,165 (1990) (right to appeal death sentence); *Godinez v. Moran* 509 U.S. 389, 398-400

(1993) (right to counsel); *Wyrick v. Fields,* 459 U.S. 42, 45-49 (1982) (waiver of Fifth Amendment to take polygraph test).

Waiver of certain constitutional rights, however, have required less of a showing. Thus the government need not prove that defendant who consented to a search knew that he had the right to withhold his consent. *Schneckloth v. Bustamonte* 412 U.S. 218, 227-233 (1973). Even when less of a showing is required, however, this Court has held that consent which is based upon government supplied misinformation is no consent at all. *Bumper v. North Carolina*, 391 U.S. 543, 548-550 (1968) (no consent where search allowed after officer said he had a warrant, but warrant was invalid)

While no decision of this Court has yet held that the *"voluntary, knowing, intelligent"* standard applies in the civil area, where property interests, as opposed to personal liberty are at stake, at least one pre-*Brady* decision makes it clear that there can be no consent to the loss of fundamental rights without a warning that fundamental rights are being lost. *Ohio Bell Telephone v. Public Utilities Commission of Ohio* 301 U.S. 292, 306 (1937) (Cardozo, J.) "We do not presume the acquiescence in the loss of fundamental rights." *Id.* at 307.

At least two post-*Brady* decisions of this Court have also applied, if not embraced, the "voluntary, knowing, intelligent" waiver standard in reaching dispositions. Thus, in *Overmeyer v. Frick* 405 U.S. 174

(1972) this Court upheld a *cognovit* provision of a contract on the ground that Overmeyer Corporation "voluntarily, intelligently, and knowingly waived the rights it otherwise possessed to prejudgment notice and hearing, and that it did so with full awareness of the legal consequences." *Id.* at 187 In *Fuentes v. Shevin* 407 U.S. 67, 95 (1972) this Court rejected a *cognovit* provision because of evidence of unequal bargaining power, and because there was no showing that the aggrieved party was made aware of the fact that he was waiving constitutional rights. "For a waiver of constitutional rights must, at the very least, be clear." *Id.*

While the more recent decisions by this Court in both the civil and criminal area appear to retreat from *Brady's* expansive view, they nonetheless provide a glimpse of a possibly greater precision in this Court's future announcements concerning waiver. Thus Justice Scalia in his concurring opinion in *Freytag v. Commissioner* 501 U.S. 868 notes that what is sometimes referred to as waiver is actually forfeiture, "the failure to make a timely assertion of a right." *Id.* at 895, n.2. Waiver, by contrast, is the "'intentional relinquishment or abandonment of a known right.'" *United States v. Olano* 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst* 304 U.S. 458, 464 (1938). "'[A] constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make a timely assertion of the right . . .'" *Id.* (quoting *Yakus v. United States* 321 U.S. 414, 444 (1944))

United States v. Olano, supra, 507 U.S. at 733 also adumbrates a standard for evaluating the level of scrutiny which must be applied for declaring or upholding a waiver:

> "Whether a particular right is waivable; whether the defendant must participate personally in the waiver; whether certain procedures are required for waiver; and whether the defendant's choices must be particularly informed or voluntary, all depend on the right at stake."
> Accord, *New York v. Michael Hill* 120 S.Ct. 659, 664 (2000).

While the recent waiver decisions of this Court move in a direction of greater precision, at least in the criminal area, the Court has paid only rare attention to the issue of the waiver of fundamental civil rights, the extent to which due process applies to waiver claims by the government, and the circumstances under which the government can be estopped from claiming waiver. The unexamined decision of the Court of Appeal in this case, and the vagueness of most claims, and many findings, of waiver bear witness to this. Waiver, meanwhile, is a dominant part of the landscape of twenty-first century life. One cannot install software, buy stock online, obtain a credit card, open a bank account, see a doctor, get at a job, lease a car, or even park a car without waiving one's rights. Modern business entities and government daily confront one with waivers to sign. See, e.g., *Wright*

v. Universal Maritime Service 525 U.S. 70 (1999) (collective bargaining agreement); *Walters v. Reno* 145 F.3d 1032 (9 Cir. 1998) cert. den. 526 U.S. 1003 (confusing INS waiver); *Circuit City Stores v. Adams* 194 F.3d 1070 (9 Cir. 1999) (cert. granted May 22, 2000, 120 S. Ct. 2004; 146 L. Ed. 2d 939) (waiver signed by employees agreeing to submit all disputes to arbitration).

Petitioner submits that this Court can and should establish that concealed and unconscionable conduct by the government against its employee simply can't be waived. This Court should also make it clear that a waiver of the right to be heard must be voluntary, knowing, and intelligently made.

II

THIS COURT SHOULD ESTABLISH THE EXTENT TO WHICH A STATE COURT CAN DENY AN INDIVIDUAL AN OPPORTUNITY TO PRESENT EVIDENCE TO PROVE THE RIGHT TO BE HEARD

The California Court of Appeal denied Zamvil an opportunity to prove his case by finding that the seventeen categories of misconduct by the District were "too remote in time to impact Zamvil's consent" and that Zamvil "waived" his objections by not raising them prior to entering into the contract. (Opinion of California Court of Appeal at A-6) Both findings were contrary to Zamvil's offer of proof and without the benefit of any evidence.

As for the "remote in time" unlawful charges, they were not remote the morning Zamvil signed the resignation agreement. Having lost his representation at the upcoming hearing, the charges were a gun to his head. Zamvil offered to prove this full-fledged impact. He offered to prove the District's violations were from the outset designed to "steamroll" him. (RT 9-16, 21-24, 26-27, 31, 34, 38, 40, 43, 47; JA 2-3, 274,611- 612, 617-622) He offered to prove that during the 18 months of the administrative prosecution, up to and including the final day of his resignation, he suffered *without pay*. (RT 43, 607) At trial, he alleged *criminal* misconduct by the District and its Superintendent, *during the 18-month period*, right up to the date of his resignation, to prevent him from discovering that he had been stripped of his rights. (RT 38, 240, 386-389; JA 274, 391-392, 621) He consistently claimed that his will was broken by the District. (JA 5-6, 8, 613; RT 279, 309, 354, 355, 363-364)

As for the claimed "waiver", as noted in our first argument (*ante* at 14), at every stage of trial and appeal Zamvil offered to prove that criminal misconduct by the District and its Superintendent successfully prevented him from discovering that he had been stripped of his rights. (RT 38, 240, 386-389; JA 274, 391-392, 621)

These factual questions underlying petitioner's right to be heard were matters for the trier of fact in the first instance. The right to present evidence is essential to the fair hearing required by the due process clause.

Jenkins v. McKeithen 395 U.S. 411, 429 (1969). Court of Appeal findings are not a substitute for a hearing where the evidence is unknown. *Garner v. Louisiana* 368 U.S. 157, 173 (1961). As Justice Cardozo wrote for this Court , where important rights are at stake, there must be a "'suitable opportunity through evidence and argument . . . to challenge the result.'" *Ohio Bell Telephone v. Public Utilities Commission of Ohio* 301 U.S. 292, 305 (1937) (citation omitted) Proofs cannot be "drawn from clouds." *Id.* at 306.

This is especially the case when the issue at hand concerns waiver of the right to be heard concerning government misconduct. Presuming waiver of a fundamental right from inaction or a silent record is impermissible. *Barker v. Wingo,* 407 U.S. 514, 525-526 (1972) "Indeed, in the civil no less than the criminal area, 'courts should indulge every reasonable presumption against waiver,'" *Fuentes v. Shevin* 407 U.S. 67, 95 (1972) (quoting *Aetna Ins. Co. v. Kennedy,* 301 U.S. 389, 393 (1937)).

> "The determination of whether there has been an intelligent waiver (of a fundamental right) must depend, in each case, upon the particular facts and circumstances surrounding that case . . . ." *Johnson v. Zerbst,* 304 U.S. 458, 464.

One cannot presume waiver of the right to be heard simply based upon inaction during a passage of time while the government sits on the evidence.

> "[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to prove that it is untrue." *Greene v. McElroy* 360 U.S. 474, 496.

As immutable as these principles may seem, this Court has not yet had the opportunity to apply or explicitly extend them to the decisions of state courts engaged in the exercise of their civil statutory and common law jurisdiction. Nonetheless,

> "the action of state courts in enforcing a substantive common-law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process." *Shelley v. Kramer* 334 U.S. 1, 17(1948).

Many basic questions deserving decision are therefore raised by California's refusal to hear evidence of non-waiver. Under what circumstances must a state court allow an individual an opportunity to present evidence to prove a right to be heard? Must state courts "indulge every reasonable presumption against waiver" of certain rights? *Fuentes v. Shevin* 407 U.S. 67, 95

(1972). Or can they establish an irrebuttable presumption of waiver based upon the failure to assert a right during a particular period? May such a policy be applied where the due process rights of public employees are at issue? See, e.g., *Gilbert v. Homar* 520 U.S. 924 (1997); *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985). Does an affected individual have the right to prove that waiver may not be claimed by the government when it has a duty to disclose the true facts, but has failed to do so? *Insurance Company v. Wolff* 95 U.S. 326, 333 (1877); *Northern Assurance Company v. Grandview Building Association,* 183 U.S. 308, 357 (1902).

Petitioner requests the Court to grant the petition to throw light upon these issues and to establish the extent to which a state court must provide an individual an opportunity to introduce evidence to prove the right to be heard.

CONCLUSIONS

This Court has paid rare attention to the issue of the waiver of fundamental civil rights, the extent to which due process applies to waiver claims by the government, and the circumstances under which the government can be estopped from claiming waiver. Waiver, meanwhile, has become a dominant part of the landscape of twenty-first century life. Someone who doesn't want to sign a waiver might better live on an island.

This Court can and should establish that some things cannot be waived under our Constitution. This Court can and should make clear that a waiver of the right to be heard must be voluntary, knowing, and intelligently made, and a finding itself based upon a due process opportunity to be heard.

For these reasons, a Writ of Certiorari should be granted.

Dated: July 18, 2000

Respectfully submitted,

JOSEPH BAXTER,
Attorney for Petitioner

IN THE
COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

KENNETH B. ZAMVIL,

Plaintiff and Appellant,

v.

PETALUMA JOINT UNION HIGH SCHOOL DISTRICT, et al.

Defendants and Respondents.

FILED:
JANUARY 18, 2000

No. A081951
Sup. Ct. No. 208215

Appellant Kenneth B. Zamvil appeals from the judgment in favor of respondents Petaluma Joint Union High School District (District) and its superintendent, Charles Cadman, on his action for rescission of contract and other relief. We affirm the judgment.

I. BACKGROUND

After 19 years of service as a science teacher at Casa Grande High School in respondent District, on March 2, 1992, the

board of education suspended Zamvil pending final disposition of numerous charges of misconduct. The charges included allegations of multiple occasions of (1) saying or doing things that were offensive to female students (2) taking class time to discuss matters involving his personal life; (3) making inappropriate statements to students that raised questions about the integrity of his grading system; (4) starting class late; and (5) touching or hitting students in inappropriate ways. The board issued amended charges – for a total of 61 allegations of misconduct – on February 23, 1993. James Bertoli represented Zamvil from approximately mid-March 1992 until October 25, 1993.[1] Thereafter the California Teachers Association (CTA) appointed Priscilla Winslow to represent him for the limited purpose of arguing for a continuance of the administrative hearing set for November 8. The motion to continue was heard on Wednesday, November 3. The administrative law judge denied a continuance.

After the hearing, Robert Henry, chief counsel for the District, disclosed to Winslow that the District had a potential new charge. Several days earlier, Jack Fitzgerald, the investigator retained by the District, reported that one of Zamvil's former students alleged that Zamvil had used drugs in his presence. A day or two later Henry had a further conversation with Winslow and faxed her a corroboration in the form of declarations in a civil action that indicated Zamvil's drug usage. Apparently the student's information was 10 years old, but Henry was of the opinion that there was precedent to circumvent the 4-year statute of limitations for disciplinary actions against certificated teachers.

Settlement negotiations ensued. Zamvil had the assistance of Bertoli as well as Steve Gallenson during this process. Gallenson testified that he began acting as temporary counsel to

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[1] All further dates are in the 1993 calendar year unless otherwise specified.

Zamvil around October 28, in order to facilitate the settlement process. During this time frame Bertoli was also meeting with Zamvil and discussed settlement with Margaret Merchat, another attorney in the District's legal department. Merchat prepared the initial draft. Revisions were proposed, and made, to accommodate Zamvil with respect to the effective date of his resignation and the type of reference the District would give to prospective employers.

In order to cancel the administrative hearing set for Monday, November 8, the District required that the resignation agreement be executed by the close of business on Friday, November 5. The District was looking at calling approximately 30 witnesses in the event the hearing went forward. Zamvil, however, was out of town on a teaching assignment, so Attorney Gallenson signed the resignation agreement for him on Friday; Zamvil executed it in person on Saturday. The District in turn cancelled the proceeding.

Seven months later Zamvil filed his action for rescission of the resignation agreement on account of duress, undue influence and fraud. The trial court granted the District's motions to exclude evidence that the school board meetings leading up to the misconduct charges, as well as the ensuing investigation, were improper. Following a six-day bench trial, the court entered judgment denying Zamvil any relief. Likewise, the court denied Zamvil's motion for a new trial. This appeal followed.

II. DISCUSSION

A. Law of Rescission

Civil Code[2] section 1689 sets forth grounds for unilateral

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[2] All further statutory references are to the Civil Code unless otherwise specified.

rescission. These include cases where "the consent of the party rescinding…was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds…" (*Id.* At subd. (b)(1).) And even where a transaction is free from fraud, duress or undue influence, a contract can be rescinded "[i]f the public interest will be prejudiced by permitting" it to stand. (*Id.* At subd. (b)(6); *Grimes* v. *Allen* (1949) 93 Cal.App.2d 653, 656.)

Duress consists of unlawful or fraudulently obtained confinement of a person, his or her relatives or property which causes the person to consent to a transaction out of fear. (See §1569; *Odorizzi* v. *Bloomfield School Dist.* (1966) 246 Cal.App.2d 123, 128.) The related doctrine of economic duress has been recognized as a basis for rescinding a settlement agreement. However, in light of the notions of protecting the freedom of contract and according finality to private dispute resolutions, courts are reluctant to set aside settlements. Thus, they apply the economic duress doctrine in limited circumstances, as a "'last resort.'" (*San Diego Hospice* v. *County of San Diego* (1995) 31 Cal.App.4th 1048, 1058.) The doctrine comes "into play upon the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure." (*Rich & Whillock, Inc.* v. *Ashton Development, Inc.* (1984) 157 Cal.App.3d 1154, 1158.) Economic duress as a ground for rescinding a contract is thus a tool to correct "the wrongful exploitation of business exigencies to obtain disproportionate exchanges of value." (*Id.* At p. 1159.)

By definition undue influence includes "taking an unfair advantage of another's weakness of mind." (§1575, subd. 2) or "taking a grossly oppressive and unfair advantage of another's necessities or distress" (*Id.* at subd. 3). Factors to be considered in determining whether there was "undue influence" include '"the

unfairness of the resulting bargain, the unavailability of independent advice, and the susceptibility of the person persuaded.'" (1 Witkin, Summary of Cal.Law (9th ed. 1987) Contracts, § 423, p. 380, quoting Rest.2d Contracts, § 177, com.b.)

Actual fraud involves conscious misrepresentation, concealment or false promises which induces another to enter a contract. (§ 1572; *Odorizzi v. Bloomfield School Dist., supra*, 246 Cal.App.2d at p. 128.) Constructive fraud "'comprises all acts, omissions and concealments involving a breach of legal or equitable duty, trust, or confidence, and resulting in damages to another.'" (*Barrett* v. *Bank of America* (1986) 183 Cal.App.3d 1362, 1368-1369.)

B. Scope of Relevant Evidence

Zamvil has outlined a list of 17 purported instances of "egregious conduct" by the District in hearing initial allegations of misconduct from parents, conducting related actions leading up to his discharge and initiating and carrying out the underlying investigation. These run the gamut from drumming up complaints, falsifying records, concealing information and committing perjury to breaching the collective bargaining agreement to violating the Education Code, the Brown Act and board policies and bylaws.

Zamvil contends the trial court erred in ruling that evidence relating to this alleged misconduct was irrelevant to his rescission action. He argues, for example, that the November 1993 resignation agreement "was inextricably tied" to the District's behavior which he variously describes as amounting to economic duress, undue influence, constructive fraud and a violation of public policy, "**Had the District followed the law**," he argues in his opening brief, "**there would not be a resignation and release**." (Original bold-faced type.) The ruling was proper.

With these and similar statements, Zamvil consistently has tried to connect the events and processes leading up to the filing of charges – including the District's basis and preparation of the misconduct charges – with the execution of the resignation agreement itself. The problem with this analysis is that duress, undue influence and fraud all go to whether or not Zamvil freely consented *to the agreement.*

To begin with, the investigation process and what it revealed as well as the District's practices, actions and procedures in hearing the initial complaints and developing the statement of charges were too remote in time to impact Zamvil's consent to the resignation agreement. More than 18 months had elapsed from the initial filing against Zamvil and the settlement. The district's conduct occurring up to initiation of the administrative proceeding was highly pertinent to the outcome of *that* proceeding. Zamvil had plenty of time to investigate and take action within the administrative proceeding with respect to all the purported violations. Copies of interview transcripts from the interviews with parents and students that Fitzgerald elected to tape-record were given to Zamvil. His remedy was to challenge the District's procedures, actions and processes in the administrative proceeding. Having declined to do so, he has waived these objections. This includes the objection based on violation of public policy because again, that objection goes to events predating the settlement negotiations.

Similarly, the trial court properly excluded as irrelevant the testimony of James McGloin, retired principal of Casa Grande High School. McGloin retired in 1993 and was not involved with events surrounding the resignation agreement. McGloin, as site administrator, had evaluated Zamvil's teaching performance. And although his testimony might have been relevant at the administrative hearing on the validity of the charges against

Zamvil, the trial court had it right in ruling that McGloin had nothing relevant to offer on "whether or not there was some [overreaching] or concealment at the time of the entry of the contract."

C. *Necessities and Distress*

Zamvil also complains that the trial court wrongfully prevented him from putting on proof of his necessity or distress, a necessary element of a claim of undue influence pursuant to section 1575. According to Zamvil, the trial court erroneously excluded relevant evidence concerning "his *in pro per* status, lack of informed and prepared counsel during settlement negotiations and, on the eve of a lengthy and complex administrative trial, his inability to find alleged drug witness Johnson, and his own distressed mental state." (Original italics.) The trial court's evidentiary decisions were sound.

1. Representation During Settlement

First, as to the status of Zamvil's representation during the settlement process, we note that the trial court was well aware of the situation, pointing out the following pertinent facts in its summary of facts: "Throughout the administrative proceeding, Plaintiff was represented by six attorneys, most specialists in teacher labor matters. (There was a period of about one week when the School District did not know whether Plaintiff was represented by counsel.) Plaintiff's principal attorney was Mr. Joseph Bertoli until October 25, 1993, when he withdrew from plaintiff's case. [¶]... (Plaintiff filed the motion [to continue] in pro per.)" (Original underscore.)

Second, although it appeared to the District that Zamvil was without representation during the period spanning October 25

– when Mr. Bertoli withdrew – and November 4, in fact both Bertoli and Gallenson consulted with Zamvil during the period leading up to the November 5 settlement agreement. Moreover, Gallenson testified that he commenced "temporary" representation of Zamvil on October 28 for purposes of facilitating execution of the resignation agreement. Additionally, Winslow specially appeared to argue the motion to continue the administrative hearing. Finally, all of these lawyers were experienced in teacher labor relations matters.

Bertoli of course was amply informed about the case, having represented Zamvil since March 1992. Bertoli and Merchat, on behalf of the District, discussed settlement and touched on the "general terms of the settlement agreement." Merchat provided Bertoli with a draft of the settlement agreement on November 4; Bertoli met with Zamvil and his wife that evening about an ex parte matter. Merchat provided him with a draft of the settlement agreement and she made changes based on discussions with both Bertoli and Gallenson.

Gallenson first became aware of Zamvil's situation earlier in 1993 when Zamvil provided him with several transcripts of student interviews. By November 5 he had examined the amended statement of charges, as well as some student interviews and a deposition. According to both Merchat and Henry, Gallenson seemed familiar with the case. Merchat had settlement discussions with Gallenson, confirmed in a faxed memorandum. Gallenson also had settlement conversations with chief counsel Henry, including a candid discussion about Henry's assessment of the strength of the case. As well, both Merchat and Henry discussed with Gallenson the issue of conveying information about the underlying charges to the California Commission on Teacher Credentialing (CCTC), notwithstanding Zamvil's resignation.

Gallenson also told Merchat he had authority to enter into a resignation agreement on behalf of Zamvil. He faxed the agreement to Zamvil on the afternoon of November 4 and spoke with Zamvil "a number of times" during the week before they signed the agreement on November 5 (Gallenson) and November 6 (Zamvil). According to Zamvil's testimony, he did not claim that Gallenson inadequately advised him concerning the terms of the resignation agreement before Gallenson signed it on his behalf. Moreover, Gallenson testified to his own understanding of all aspects of the agreement.

In addition, although Winslow played a lesser role, she, too, was involved in settlement discussions. For example, Winslow discussed with Henry what type of recommendation the District would provide to prospective employers. As well, they covered the merits of the case from Henry's perspective, allegations of drug use by a former student and the issue of relaying information to the CCTC. Henry faxed to her several declarations filed in Zamvil's dissolution action that indicated drug use on his part.

Thus, contrary to Zamvil's assertions, the record demonstrates that Zamvil had the assistance of competent, informed counsel during the settlement process.

2. Representation at the Administrative Hearing

Zamvil argues nonetheless that his distress was compounded by the fact that he did not have an attorney to represent him in the upcoming administrative hearing, and the court did not allow Gallenson to testify that he had a calendar conflict. First, the court cut-off this testimony on relevancy grounds because Gallenson had just testified that he made a special appearance in the case. Second, when asked whether his representation in the administrative proceeding was conditioned on

the administrative law judge granting a continuance, Gallenson asserted the attorney-client privilege. Then, after the court prodded him to just "[t]ell us what your relationship to the plaintiff was in this case," the question of a conditioned representation was reasserted and Gallenson gave a nonanswer. Third, Zamvil himself wrote to the administrative law judge on November 4 that he had Gallenson's tentative agreement to represent him at the administrative hearing. Zamvil testified that the tentative agreement was "[c]onditioned upon getting a continuance."

Further, Zamvil moved for a continuance in the administrative proceeding and in superior court; both motions were denied. The denials of continuance by the administrative law judge and the superior court[3] on November 3 and November 5 respectively are not a basis for rescission. As the trial court indicated, if Zamvil felt he could not go forward without a continuance, he should have sought a writ before November 8. Although it would have been tight, a writ petition could have been prepared in advance and filed immediately after the November 5 denial of continuance or stay. Zamvil had the assistance of counsel during this period. It was up to them to advise Zamvil of these procedures prior to signing the resignation agreement.

3. Drug Use Allegations

Zamvil further asserts that the court wrongfully precluded testimony about "one of the most distressing of circumstances. The court would not let plaintiff testify that Johnson's name was given to him on November 3, 1993, as a witness who would come forth and testify that Zamvil used drugs with a student... Nor was

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[3] Although we do not have copies of anything relating to the November 5 ex parte hearing in superior court, it appears from the briefs that the hearing was on a motion for either a continuance or a stay.

he allowed to testify that he had no means of finding Johnson." Contrary to this assertion, both Merchat and Zamvil testified to Zamvil's knowledge of Johnson as a potential witness on November 3. Additionally, as to the objection that the court impermissibly prevented Zamvil from testifying that he had no means of locating Johnson, Merchat testified that neither Bertoli nor Gallenson nor Zamvil ever requested the identity of the District's drug witness.[4] Moreover, Bertoli told Merchat *not* to obtain a statement from Johnson, the inference being that such information would have to be made available to the CCTC. Finally, Zamvil was permitted to testify that he had "[v]ery great concern" about introducing evidence at the administrative hearing related to alleged drug use. He explained that such evidence, true or false, would end up being very prejudicial and he would end up "losing the credential..." He said when he heard about Johnson as a potential witness, he became upset, the news "sent me into a panic..." He was frantic "[t]hat somebody could come up with this outrageous stuff." This development caused him to lose sleep.

Henry shared his thinking about the possibility of introducing the drug use information at trial with both Winslow and Gallenson, even though the allegations went to conduct occurring beyond the four-year statute of limitations. Henry indicated he was assessing whether to amend the statement of charges, pending further research and review of the information. The statement of charges was never amended. If Zamvil and the attorneys assisting him thought that a continuance was needed to conduct further discovery in light of the potential new witness, a continuance for good cause could have been sought in the administrative proceeding itself. (See Gov. Code, § 11524.) No one sought a continuance on this basis and Zamvil cannot now

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[4] Apparently Winslow asked Henry if he could identify the student by name, but Henry did not know the name at the time.

complain about the timing of the dismissal hearing vis a vis learning of the potential student witness.

D. Best Evidence

Investigator Fitzgerald made notes of his interviews with ex-student Johnson. Johnson testified that Fitzgerald asked him to review those notes and sign a statement verifying their accuracy. Johnson wanted to make some changes to the notes and add a statement. Johnson testified that he asked Fitzgerald if he would leave the statement for him to review, and asked if could modify it; Fitzgerald refused. To get rid of Fitzgerald, Johnson signed a statement verifying the accuracy of the notes on condition that Fitzgerald verify one point and revise a section of the notes that Johnson thought posed a question, but did not include his response. The areas of inaccuracy had to do with Zamvil being at a party, and smoking cocaine or marijuana.

Counsel for Zamvil asked to have Fitzgerald's notes produced as the best evidence of their contents. The trial court denied the motion. Counsel renewed the request when the District asked Fitzgerald whether Johnson asked for certain changes to the notes before verifying their accuracy. Zamvil now charges that the trial court erred to his prejudice in failing to order the notes produced at trial. We disagree.

First, the best evidence rule (now the secondary evidence rule[5]) is only concerned with proof of the contents of a written document. (See Evid. Code, § 1520 et seq. and former Evid. Code, §§ 1500-1511, repealed by Stats. 1998, ch. 100, § 1, operative Jan.

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[5] See California Law Revision Commission Comment, West's Annotated Evidence Code sections 1500 to 1511 (2000 pocket supp.) page 35: "The Best Evidence Rule is repealed and replaced with the Secondary Evidence rule."

1, 1999.) For the most part, the District was not trying to prove the contents of Fitzgerald's notes with parol evidence. Rather, the District was trying to prove Johnson's statements and actions with respect to the notes as well as the fact that he executed the verification. The notes, after all, were purportedly notes of what Johnson said. Johnson, of course, can testify as to what he originally said to Fitzgerald, and to what he told Fitzgerald in terms of the inaccuracy of the notes.

Second, to the extent the District did try to prove the contents of the notes,[6] the failure to order them produced was not prejudicial. Zamvil contends that inspection of the notes would have helped answer these questions: (1) Did they contain initialing and dating by Johnson; (2) what do the notes indicate Johnson said Zamvil did in conjunction with drugs, if anything; (3) do the notes look more like questions than answers; and (4) do the notes impeach Fitzgerald's testimony about what Johnson told him?

To begin with, Johnson testified that he signed a statement saying the notes were accurate and initialed and dated each page of the notes. His testimony as to what he did is as good as the notes themselves. Next, Johnson testified that he verified the statement: "'[A]ctually saw him snorting cocaine and freebasing in front of students,'" but clarified that he told Fitzgerald "it looked like he had written down the question, not my response." From this the trial court found that Johnson verified that he told Fitzgerald "*that he* saw Mr. Zamvil snorting cocaine and freebasing cocaine with students in 1983." (Italics added.) While we agree that a perusal of the notes would have clarified their structure, i.e., whether some

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[6] For example, counsel for the District did ask for confirmation of the contents of the notes when he asked Johnson: "And one of the statements in those notes that you verified is, 'actually saw him snorting cocaine and freebasing in front of students,' correct?"

parts looked more like questions than answers, not having the notes was not prejudicial.

Ultimately, Fitzgerald's notes could only be relevant to the issue of whether the District acted in bad faith relying on *Fitzgerald's findings to* relay drug allegations to Zamvil's attorneys in order to intimidate him into resigning. Whether the notes were accurate or not, what is important is that Fitzgerald informed the District that he had identified a former student who had alleged Zamvil used drugs in his presence. The District corroborated the drug use allegations with three declarations from Zamvil's dissolution indicating his drug usage. Regardless of Fitzgerald's competency or integrity in interviewing Johnson and preserving his observations, there was no evidence indicating that the District would have reason to doubt Fitzgerald's integrity or accuracy as an investigator.

We affirm the judgment.

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Reardon, J.

We concur:

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Hanlon, P.J.

_____

Poché, J.

A081951

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL

First Appellate District, Division Four
No. A081951, SO86292

IN THE
SUPREME COURT OF THE
STATE OF CALIFORNIA
EN BANC

KENNETH B. ZAMVIL,
Appellant,

v.

PETALUMA JOINT UNION HIGH
SCHOOL DISTRICT, et al.
Respondents.

FILED: SUPREME COURT
APRIL 19, 2000
Frederick K. Ohlrich, Clerk
/ss/ FKO
Clerk

Appellant's petition for review is DENIED.

/ss/ GEORGE
Chief Justice